

1087.

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Regular Second Appeal No.1675 of 1991 (O&M)**

Date of decision: 23.12.2015

The State of Punjab, through the Collector, Ferozepur, District  
Ferozepur.

... Appellant

versus

Davinder Singh

.... Respondent

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Yatinder Sharma, Additional Advocate General,  
Punjab, for the appellant.

None for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

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**K.Kannan, J. (Oral)**

1. The appeal is by the State that has been admitted without framing any substantial question of law. I, therefore, frame the same as following:-

Whether the court below was not in error in reversing the decision of the trial court on the ground that notice to show cause against termination was not issued on the plaintiff, failing to note that notice had been served on

his wife, who had received it on his behalf and hence, was sufficient fulfillment of the statutory requirement under Rule 16.24 of Punjab Police Rules?

2. The respondent has been served but none appears. The counsel for the appellant was prepared to argue the case as soon as the formulation of the question for consideration was made and I have, therefore, proceeded to dispose of the case on the basis of submissions made by the counsel for the State/appellant.

3. The charge attributed to the plaintiff-Constable was that he was unauthorizedly absent from 24.06.1984 to 25.12.1984. The enquiry was constituted for unauthorized absence and the Enquiry Officer gave report finding the plaintiff to be guilty of the misconduct attributed to him. A notice was alleged to have been sent calling upon the plaintiff to give his response and a termination order was issued on 15.05.1985. The plaintiff challenged the order contending that there had been no notice and that even at the time of enquiry before the Enquiry Officer, no document had been given to him to bring out to defence effectively. The defendant's contention was that even before the Enquiry Officer, he remained ex parte initially and set ex parte on 13.03.1985 but rejoined the enquiry on 16.03.1985. The plaintiff gave evidence that he was not supplied with copies of the documents and as such he was greatly prejudiced in the preparation of his defence. He reiterated that no show cause

notice had been served on him before passing the impugned order.

4. Although the trial court dismissed the suit, the appellate court reversed the decision on a singular consideration of non-compliance of the statutory rules of requirement of service of show cause notice before the impugned decision was taken.

5. The appellate court's finding that there was no valid service is assailed by the learned counsel for the State to contend that notice had been served on his wife on his behalf who had received the same explaining that her husband was not in town and that she was receiving it on his behalf was sufficient compliance of the notice required under the relevant rules.

6. This contention, in my view, cannot support the rule requirements since the notice alleged to have been served on his wife had not been even confronted to the plaintiff when he complained that the impugned decision had been taken without service of notice. I must also observe that the defendant had not even filed the written statement but had merely participated at the trial. I have not been shown through any particular rule that makes possible an inference that the service on the wife could be treated as sufficient compliance of the rule requirements. There had been surely substantial prejudice for a decision of termination to be taken even without service of notice on the plaintiff. The decision rendered by the lower appellate court is, under the circumstances,

justified and I will not find any reason for interference in the decision of the lower appellate court. The second appeal is dismissed.

**(K.KANNAN)**  
**JUDGE**

23.12.2015  
sanjeev